

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 04-300
FM Broadcast Stations.)	RM-11022
(Fruita and Hotchkiss, Colorado) ¹)	RM-11105

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: June 22, 2005

Released: June 24, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* ("Notice")² issued at the request of Dana J. Puopolo ("Petitioner") requesting the allotment of Channel 255C3 at Fruita, Colorado, as its second local service. Petitioner filed comments. Hotchkiss Communications filed a counterproposal to which Petitioner filed reply comments. Hotchkiss Communications filed reply comments in response to the *Public Notice*. No other comments or counterproposals were received in this proceeding.

2. **Background.** The *Notice* proposed the allotment of Channel 255C3 at Fruita, Colorado, as its second local service with a site restriction of 14 kilometers (8.7 miles) northeast at coordinates 39-15-05 NL and 108-50-16 WL. This site restriction is necessary to avoid short-spacing to a vacant allotment on Channel 253C3 at Palisade, Colorado. Petitioner filed comments reiterating its interest in Channel 255C3 at Fruita.

3. In response to the *Notice*, Hotchkiss Communications filed a timely counterproposal requesting the allotment of Channel 255C3 at Hotchkiss, Colorado, as its first local service at reference coordinates 38-39-47 NL and 107-35-06 WL. This site requires a site restriction of 19.1 kilometers (11.9 miles) southeast of Hotchkiss. Hotchkiss is an incorporated community located in Delta County, Colorado with a 2000 U.S. Census population of 968 persons. Hotchkiss has its own post office and zip code (81419), fire department, public library, chamber of commerce, local churches, community organizations and commercial businesses. Hotchkiss has several local businesses that list Hotchkiss in their names, such as Hotchkiss Automotive, Hotchkiss Elks, Hotchkiss Inn, Hotchkiss Meats, Hotchkiss Pawn and Stuff, and Hotchkiss Trading Company.

4. Petitioner filed reply comments suggesting alternate Channel 258C3 at Hotchkiss, with coordinates 38-46-32 NL and 107-36-15 WL, which requires a site restriction of 8 kilometers (5 miles) southeast of Hotchkiss. Petitioner states that alternate Channel 258C3 would require lesser of a site

¹ The community of Hotchkiss was added to the captioned. See *Public Notice*, Report No. 2679 released October 29, 2004.

² *Fruita, Colorado*, 19 FCC Rcd 15303 (MB 2004).

restriction than Channel 255C3, if allotted at Hotchkiss. As such, Petitioner requests the allotment of Channel 255C3 at Fruita in lieu of Hotchkiss.

5. In response to the *Public Notice*, Hotchkiss Communications filed reply comments stating that the allotment of Channel 255C3 at Hotchkiss is preferred over the allotment of Channel 255C3 at Fruita based on the FM allotment priorities.³ Specifically, Channel 255C3 would provide a first local service at Hotchkiss, priority 3, whereas the allotment of Channel 255C3 at Fruita would provide a second local service, priority 4. Moreover, Hotchkiss Communications states that the Petitioner's alternate Channel 258C3 at coordinates 38-46-32 NL and 107-36-15 WL is short-spaced to Station KQMT(FM), Channel 258C, Denver, Colorado and the proposed allotment of Channel 257A at Lake City, Colorado. Therefore, Hotchkiss Communications requests the allotment of Channel 255C3 at Hotchkiss because the allotment at Hotchkiss would better serve the public interest.

6. **Discussion.** Generally, conflicting proposals are considered on a comparative basis consistent with the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁴ In this instance, a staff engineering analysis determined that Channel 258C3 can be allotted at Hotchkiss in compliance with the Commission's minimum distance separation requirements at different reference coordinates than proposed by the Petitioner. Therefore, a comparison is no longer necessary. As such, we find that the public interest would be served by allotting Channel 255C3 at Fruita, Colorado, as its second local service and Channel 258C3 at Hotchkiss, as its first local service.

7. As stated in the *Notice*, Channel 255C3 can be allotted to Fruita, Colorado with a site restriction of 14 kilometers (8.7 miles) northeast at coordinates 39-15-05 NL and 108-50-16 WL. This site restriction is necessary to avoid short-spacing to the New FM station, Channel 253C3 at Palisade, Colorado. Channel 258C3 can be allotted to Hotchkiss, Colorado with a site restriction of 3.8 kilometers (2.4 miles) south at coordinates 38-46-03 NL and 107-42-17 WL. This site restriction is necessary to avoid short-spacing to FM Station KEKB, Channel 260C, Fruita, Colorado.

8. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

9. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective August 8, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Fruita, Colorado	255C3, 260C
Hotchkiss, Colorado	258C3

³ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).] *See Revisions of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982)

⁴ *Id.*

10. The window period for filing applications for Channel 255C3 at Fruita, Colorado and Channel 258C3 at Hotchkiss, Colorado will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

11. IT IS FURTHER ORDERED, That the aforementioned proceedings ARE TERMINATED.

12. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Audio Division
Media Bureau